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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,354	02/14/2004	Aaron Bush		7896

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EXAMINER

REIFSNYDER, DAVID A

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 03/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/779,354

Applicant(s)

BUSH, AARON

Examiner

David A. Reifsnnyder

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/20/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Specification*

The disclosure is objected to because the following recitation in paragraph [0058] of the applicant's specification is confusing and hard to understand: ***"In the event the arms 11a and 11b and 19a and 19b are made of a magnetic opaque metal or plastic, an alternative and 11b in 19a and 19b are made of a magnetic opaque metal or plastic, an alternative arrangement is shown at Figure 5."***

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 2-4; since the applicant has only claimed an "attachment means for affixing a magnet to each of the arms" and not the magnets; it is vague and indefinite as to what the applicant intends to claim in claims 2-4.

Regarding claim 5; the recitation of "flex ion means" is vague and indefinite as to what defines a "flex ion means".

Regarding claims 6, 7, 10 and 11; since the applicant has only claimed an “a means for affixing a magnet to each arm” and not the magnets; it is vague and indefinite as to what the applicant intends to claim in claims 6, 7, 10 and 11.

Regarding claim 12; the recitation of “the sample holder” and “the capacity” both lack antecedent basis. Furthermore, since the applicant has not claimed a sample holder it is vague and indefinite as to what the applicant intends to claim in claim 12.

Regarding claim 13; the recitation of “the specimen holder” lacks antecedent basis. Furthermore, since the applicant has not claimed a specimen holder it is vague and indefinite as to what the applicant intends to claim in claim 13.

Regarding claim 8; the recitation of “the sample holder walls”, “the other”, “the magnet”, “the same height”, the sample” and “the same holder” all lack antecedent basis. Furthermore, the recitation of “two of the sample holder walls, (being opposite the other)” can not be understood as to what is meant by “sample holder walls”. In addition, the recitation of (being opposite the other) should not be in parenthesis.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Wang et al.

Regarding claims 1- 7 and 9-13; Wang et al. discloses as device for establishing and maintaining a static magnetic null field in a substantially fixed relationship to a quantity of cellular material comprising:

a holder having a first arm an second arm;

means for adjusting the position of the first and second arm; and

attachment means for affixing a magnet having a strength of between to each of the arms of the holder in a manner so that a magnetic null field is formed in an area between the magnets. (see Figs. 8 and 9)

Regarding claim 8; Wang et al. discloses a sample holder device, comprising:

four walls defining an opening sized to fit a sample holder, two of the four walls being opposite each other; and

an attachment means for attaching a magnet to each of the two opposite walls.

(See Fig 7A)

Claims 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Liberti et al.

Regarding claim 8; Liberti et al. discloses a sample holder device, comprising:

four walls defining an opening sized to fit a sample holder, two of the four walls being opposite each other; and

an attachment means for attaching a magnet to each of the two opposite walls.


(See Figs. 1A and 4B)

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Reifsnyder whose telephone number is (571) 272-1145. The examiner can normally be reached on M-F 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda M. Walker can be reached on (571) 272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David A Reifsnyder  
Primary Examiner  
Art Unit 1723

DAR